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**FEB 07 2006**

In re Application of  
Kennedy  
Application No. 09/510,607  
Filed: February 22, 2000  
Attorney Docket No. 020431.0662

**OFFICE OF PETITIONS**  
  
**ON PETITION**

This is a decision on the petition filed November 21, 2005, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition To Withdraw the Holding of Abandonment."

Procedural History:

A non-final Office action was mailed on January 16, 2003.

Petitioner alleges a reply to the Office action was transmitted by facsimile to the Office on April 2, 2003.

An IDS and attachments were filed on April 8, 2003. One of the attached non-patent documents was a copy of application no. 09/504,247 including an amendment which had been filed in application no. 09/504,247. The amendment was not intended to be a reply to an Office action mailed in the instant application.

A revocation of the old power of attorney, new power of attorney, and change of address were filed on June 17, 2005. These papers were not entered by the Office.

A Notice of Abandonment was mailed on October 18, 2005.

Analysis:

Rule 1.8(b) provides a method by which one may prove the timely submission of a paper should the paper be lost or misplaced.

Rule 1.8(b) provides that when correspondence satisfies 37 CFR 1.8(a), but was not received by the Patent and Trademark Office, the correspondence will be considered timely if:

- (1) petitioner informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence.
- (2) petitioner supplies an additional copy of the previously mailed or transmitted correspondence and certificate,

- (3) petitioner includes a statement which attests on a personal knowledge basis, or to the satisfaction of the Commissioner, to the previously timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement, and
- (4) petitioner supplies any other information required by the Office.

As to item (3) listed above, petitioner has submitted a statement and a copy of the sending unit's report confirming transmission. However, absent extraordinary circumstances, the statement must be made by one with first hand knowledge of the submission of the paper. The certificate of transmission was signed by Darla J. Rupert. Therefore, a statement by Ms. Rupert should be supplied.

The revocation of the old power of attorney, new power of attorney, and change of address filed on June 17, 2005, have been entered and made of record.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300  
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley  
Senior Petitions Attorney  
Office of Petitions